

Honorable Mary Jo Heston
CHAPTER: 13
HEARING DATE: 12/6/2018
HEARING TIME: 1:00 PM
RESPONSE DATE: 11/29/2018

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON (SEATTLE)

In re

BRADLEY RICHARD BALLEs,

Debtor(s).

Case No. 18-43433-MJH

Chapter 13

**OBJECTION TO CONFIRMATION OF
CHAPTER 13 PLAN**

Federal National Mortgage Association ("Fannie Mae"), by Seterus, Inc. as the authorized subservicer ¹ ("Creditor"), hereby objects to confirmation of the Chapter 13 Plan filed by Debtor in the above-referenced matter. The basis of the objection is stated below.

I. STATEMENT OF FACTS

1. On or about December 17, 2007, Debtor, executed and delivered to Homecomings Financial, LLC ("Lender") a Promissory Note in the original principal amount of \$203,500.00 (the "Note"). The Note is secured by a Deed of Trust encumbering real property commonly described as 4417 North 22nd St., Tacoma, WA 98406 (the "Property"), which is more fully described in the Deed of Trust.

2. Subsequently, all right, title and interest under the Note and Deed of Trust was assigned to Creditor.

¹ This Objection to Confirmation of Chapter 13 Plan shall not constitute a waiver of the within party's right to receive service pursuant to Fed. R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004, notwithstanding Aldridge Pite, LLP's participation in this proceeding. Moreover, the within party does not authorize Aldridge Pite, LLP, either expressly or impliedly through Aldridge Pite, LLP's participation in this proceeding, to act as its agent for purposes of service under Fed. R. Bankr. P. 7004.

3. On or about October 11, 2018, Debtor filed a Chapter 13 bankruptcy petition. Debtor's Chapter 13 Plan ("Plan") provides for payments to the Trustee in the amount of \$1,450.00 per month for 36 months. The Plan provides for the Trustee to disburse post-petition payments on Creditor's Claim. The Plan proposes to cure arrears owed to Creditor in the amount of \$12,983.00 with monthly payments of \$216.38.

4. The pre-petition arrearage on Creditor's secured claim is estimated to be \$20,150.08. The arrears will be reflected on Creditor's Proof of Claim.

II. ARGUMENT

Pursuant to 11 U.S.C. § 1322(b)(5) and 1325(a)(5)(B)(ii), a plan must provide for the cure of arrears within a reasonable time and provide for continuing payments on a secured claim where the last payment is due after the date which the final plan payment is due.

Arrears are understated in the Plan. Arrears owed on Creditor's claim are estimated to be \$20,150.08, but the Plan provides for arrears of only \$12,983.00. Debtor will have to amend the Plan to increase payments to Creditor to approximately \$336.00 monthly in order to cure pre-petition arrears over 60 months. As proposed, the Plan fails to satisfy 11 U.S.C. § 1322(b)(5) and 1325(a)(5)(B)(ii), and confirmation must be denied.

WHEREFORE, Creditor respectfully requests:

i) That confirmation of the Debtor's Chapter 13 Plan be denied and Debtor be ordered to file a Motion to Confirm Amended Plan within 14 days;

ii) That the Plan be amended to provide for the cure of arrears owed to Creditor within a period not exceeding 60 months; and

iii) For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: October 26, 2018

ALDRIDGE PITE, LLP

/s/ Wesley Lucke

LESLEY D. LUEKE, WSBA #49150
Attorneys for FEDERAL NATIONAL
MORTGAGE ASSOCIATION ("FANNIE
MAE"), BY SETERUS, INC. AS THE
AUTHORIZED SUBSERVICER

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9 **CERTIFICATE OF SERVICE**

I, CIARA M. REBOYA, am a resident of San Diego, California, and I am over the age of
eighteen (18) years, and not a party to the above referenced case. My business address is 4375
Jutland Drive, Suite 200; P.O. Box 17933, San Diego, CA 92117-0933.

On October 26, 2018, I served the foregoing OBJECTION TO CONFIRMATION OF
CHAPTER 13 PLAN on the following individuals by depositing true copies thereof in the United
States mail, enclosed in a sealed envelope, with postage paid, addressed as follows:

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17 **DEBTOR(S)**

Bradley Richard Balles
4417 N 22nd Street
Tacoma, WA 98406

On October 26, 2018, I served the foregoing OBJECTION TO CONFIRMATION OF
CHAPTER 13 PLAN on the following individuals by electronic means through the Court's ECF
service:

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28 **DEBTOR(S) ATTORNEY**

Amy Wilburn
Advantage Legal Group
12207 NE 8th Street
Bellevue, WA 98005
amy@advantagelegalgroup.com

CHAPTER 13 TRUSTEE

Michael G. Malaier
1551 Broadway, Ste 600
Tacoma, WA 98402
ecfcomputer@chapter13tacoma.org

I certify under penalty of perjury that the foregoing is true and correct.

Dated: October 26, 2018

/s/Ciara M. Reboya
CIARA M. REBOYA